

REAL ESTATE COMMISSION
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Real Estate)	REC-2003-345-L
Salesperson's License of)	
)	COMMISSION'S
DONNA I. GUTIERREZ,)	FINAL ORDER
)	
Respondent.)	
_____)	

COMMISSION'S FINAL ORDER

On May 31, 2006, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter to the Real Estate Commission ("Commission"). Copies of the Hearings Officer's recommended decision were also transmitted to the parties. The parties were subsequently provided an opportunity to file exceptions. On July 21, 2006, exceptions were filed by Respondent Donna I. Gutierrez ("Respondent"). On July 24, 2006, a statement in support of the Hearings Officer's recommended decision was filed by Petitioner Regulated Industries Complaints Office ("Petitioner"). Neither party requested the opportunity to present oral argument.

Upon review of the entire record of this proceeding, the Commission adopts the Hearings Officer's recommended decision as the Commission's Final Order. Accordingly, the Commission finds and concludes that the preponderance of the evidence established that Respondent violated Hawaii Revised Statutes §§467-14(20) and 436B-19(14).

For the violations found, the Commission orders that Respondent's real estate salesperson's license shall be revoked and that Respondent shall immediately submit all indicia of licensure as real estate salesperson in the State of Hawaii to the Executive Officer of the Commission.

The Commission further orders that Respondent pay a fine of \$1,000.00 and that Respondent pay said fine within sixty (60) days of the Commission's Final Order. Payment of the fine shall be by certified check or money order made payable to the "State of Hawaii, Compliance Resolution Fund." Payment of the fine shall be a condition for relicensure.

DATED: Honolulu, Hawaii: [AUGUST 25, 2006].

/s/ TRUDY I. NISHIHARA

TRUDY I. NISHIHARA
Chairperson

/s/ STANLEY M. KURIYAMA

STANLEY M. KURIYAMA
Vice Chairperson

/s/ LOUIS E. ABRAMS

LOUIS E. ABRAMS
Commission Member

/s/ ANNETTE AIONA

ANNETTE AIONA
Commission Member

/s/ MICHELE SUNAHARA LOUDERMILK

MICHELE SUNAHARA LOUDERMILK
Commission Member

/s/ FRANCES T. GENDRANO

FRANCES T. GENDRANO
Commission Member

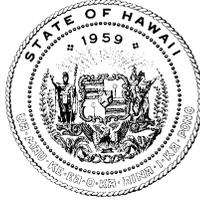
/s/ WILLIAM CHEE

WILLIAM S. CHEE
Commission Member

/s/ MARK SUIISO

MARK SUIISO
Commission Member

Commission's Final Order; In Re Real Estate Salesperson's License of Donna I. Gutierrez, REC-2003-345- L.



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In the Matter of the)	REC 2003-345-L
Real Estate Salesperson's License of)	
)	HEARINGS OFFICER'S
DONNA I. GUTIERREZ,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	AND RECOMMENDED
)	ORDER
_____)	

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

On November 15, 2005, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner"), filed a petition for disciplinary action against the real estate salesperson's license of Donna I. Gutierrez ("Respondent"). The matter was duly set for hearing, and the notice of hearing and pre-hearing conference was transmitted to the parties.

On April 25, 2006, the hearing in the above-captioned matter was convened by the undersigned Hearings Officer pursuant to Hawaii Revised Statutes ("HRS") Chapters 91, 92 and 467. Petitioner was represented by its attorney, Diane R. Corn, Esq. Respondent did not appear either in person or by representation.

Having reviewed and considered the evidence and arguments presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and recommended order.

II. FINDINGS OF FACT

1. Respondent was originally licensed as a real estate salesperson by the Real Estate Commission ("Commission") on April 24, 1991. Respondent's real estate salesperson's license, License No. RS 50101, is currently set to expire on December 31, 2006.

2. In 1991, Respondent was convicted of the crime of theft in the second degree. The theft was the result of Respondent's failure to report to the Department of Human Services ("DHS"), her purchase and ownership of a truck, eleven separate earnings payments, and the receipt of nine separate temporary disability insurance payments.

3. As a result of the 1991 theft conviction, Respondent was sentenced to five years probation, and ordered to pay restitution to DHS in the amount of \$3,492.00.

4. On or about October 28, 2003, Respondent pled no contest to one count of theft in the second degree and one count of welfare fraud. Respondent was sentenced to thirty days in jail, five years probation, and ordered to pay to DHS restitution in the sum of \$3,233.00.

III. CONCLUSIONS OF LAW

Petitioner has charged Respondent with violating the following provisions of the HRS:

§467-14 Revocation, suspension, and fine. In addition to any other actions authorized by law, the commission may revoke any license issued under this chapter, suspend the right of the licensee to use the license, fine any person holding a license, registration, or certificate issued under this chapter, or terminate any registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following:

* * * *

(20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.

§436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses. In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

* * * *

(14) Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation[.]

The undisputed evidence was sufficient to prove that Respondent has failed to maintain a reputation for honesty and truthfulness in violation of HRS §467-14(20). Respondent's 2003 fraud conviction also leads the Hearings Officer to the conclusion that the Respondent violated HRS §436B-19(14).

IV. RECOMMENDED ORDER

Based on the foregoing findings and conclusions, the Hearings Officer recommends that the Commission find and conclude that the preponderance of the evidence established that Respondent violated HRS §§467-14(20) and 436B-19(14).

For the violations found, the Hearings Officer recommends that Respondent's real estate salesperson's license be revoked and that Respondent be required to immediately submit all indicia of licensure as real estate salesperson in the State of Hawaii to the Executive Officer of the Commission.

The Hearings Officer also recommends that Respondent be fined the sum of \$1,000.00 and that Respondent pay said fine within sixty (60) days of the Commission's Final Order. Payment of the fine shall be by certified check or money order made payable to the "State of Hawaii, Compliance Resolution Fund." The Hearings Officer also recommends that payment of the fine be made a condition for relicensure.

DATED at Honolulu, Hawaii: [MAY 31, 2006].

/s/ CRAIG H. UYEHARA

CRAIG H. UYEHARA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs